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SPECIFIC GROUPS AND INDIVIDUALS: MASS EXODUSES AND DISPLACED PERSONS

Written statement submitted by the South Asia Human Rights Documentation Centre, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 December 1999]

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Failure of UNHCR: protection of refugees must come under the Commission on Human Rights

1. The South Asia Human Rights Documentation Centre (SAHRDC) has been concerned about the growing lack of protection for refugees across the world. Protection has not been the key priority for the Office of the United Nations High Commissioner for Refugees (UNHCR).

2. In May 1995, SAHRDC published "The Status of Refugees Under the Protection of UNHCR in New Delhi". The UNHCR office in New Delhi as well as its Geneva headquarters were provided copies of the report for comments. SAHRDC did not receive a written response from either. It was at that time that SAHRDC ended its Partnership in Action (PARinAC) relationship with UNHCR, troubled by the agency's unwillingness to change its approach.

3. Yet, in its 1998 annual report, The State of The World's Refugees: A Humanitarian Agenda, UNHCR cites the condition of the urban refugees in New Delhi as a success story. UNHCR's vocational training programme is highlighted as an attempt to reduce the refugees' dependence on subsistence allowance. UNHCR claims that out of 20,000 urban refugees who received subsistence allowance till 1995, only 2,500 currently require monthly subsistence allowance. The other 17,500 refugees, who are alien to New Delhi, have ostensibly learnt within two years the survival techniques of living in New Delhi. An amazing success story considering the millions of unemployed Indians in New Delhi!

4. But SAHRDC, during its research for the report "Abandoned and Betrayed: The Condition of Afghan refugees", released on 16 November 1999, was not able to find a single refugee who had been granted a work permit by the Government of India. The prohibition on employment of aliens by the Government of India makes it almost impossible for UNHCR to ensure self-sufficiency for the refugees. Since UNHCR is unable to set up hostels and distribute rations in New Delhi because the Government will not provide the necessary land, most of the refugees were given a monthly subsistence allowance. In what can only be described as a zealous attempt to reduce its own subsistence allowance caseload, UNHCR has forced many refugees to accept lump-sum grants. Although UNHCR has organized some vocational training courses, refugees are not legally permitted to work. While it is the perverse logic of UNHCR that has placed the Afghan refugees in this precarious situation, a large part of the blame falls on the Government of India, which has effectively chosen a policy of non-cooperation with UNHCR's efforts.

5. Since SAHRDC published its report in 1995, UNHCR has done little to improve the situation, treating outbursts of protest from refugees by calling the New Delhi police. Nine asylum-seekers who fled from atrocities in Myanmar were arrested under the Foreigners' Act for demonstrating in front of the UNHCR office in 1999. UNHCR has further evaded refugee grievances by delegating many of its core tasks to local NGOs, namely the National Council of YMCAs of India and the Voluntary Health Association of Delhi.

6. Of late, it is apparent that UNHCR is going beyond the call of duty and diplomatic requirements to accommodate the sensibilities of the Government of India. This is most clear in the case of the Afghan refugees. To the Indian policeman who mans the Foreigners Regional Registration Office (FRRO), as well as to the civil servants in the Indian Ministries of

External Affairs and Home Affairs, every Afghan is the Islamic fundamentalist bogeyman. UNHCR is not unaware of this but chooses not to challenge New Delhi's conjuring of the Islamic Fu Manchu, notwithstanding the fact that a sizeable majority of the Afghan refugees were fleeing from and are opposed to the many Islamic fundamentalist armed groups fighting for control of Afghanistan.

7. This paranoia on the part of the Government of India has manifested itself in the recent wholesale denial of residence permits to Afghan refugees by the Ministry of Home Affairs. This decision has effectively turned 60,000 Afghan refugees into illegal migrants, subject to deportation at any time.

8. Now living illegally in India, most of these refugees are wary about travelling outside their own neighbourhoods or continuing outdoor jobs (such as street peddling, the most common profession of Afghan refugees) for fear of extortion or, even worse, deportation at the hands of the Indian police. UNHCR has failed to take any public action on this issue despite few reported cases of deportation.

Problem with the Convention Relating to the Status of Refugees

9. According to UNHCR's mandate and the 1951 Convention, the term "refugee" applies to a person who has fled from his or her country because of a well-founded fear of persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group, and who further cannot, or due to such fear does not, want to return. The 1967 Protocol to the Convention altered this definition only insofar as it removed language which limited it to refugees who had been displaced as a result of events occurring before 1951. This definition reflects the strict individualistic approach to rights discourse which prevailed at the time the Convention and the Statute of the Office were drafted, and as such it excludes from the UNHCR mandate those refugees who could not prove that they were specifically singled out for persecution. The Refugee Convention and its Protocol abysmally failed to address the refugee issues in Asia and Africa.

10. Unlike other treaties of the United Nations like the International Covenant on Civil and Political Rights , the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, where the members of the treaty bodies provide interpretation of various articles, there is no such recognized expert body to interpret the articles of the Refugee Convention and its Protocol. There is no legally binding definition of "fear of persecution" as provided in article 1 of the 1951 Convention. The interpretation of "fear of persecution" which is crucial for determination of refugee status depends on the whims and fancies of the concerned UNHCR legal officer. Consequently, hundreds, if not thousands, have been denied refugee status in New Delhi, not on legal grounds but because of other considerations.

11. UNHCR's Executive Committee (Excom) could have been an appropriate body to deal with such issues. However, the UNHCR Excom is a political body, where State party interests are paramount. Most NGOs invited to the UNHCR Pre-Excom or Excom meetings are humanitarian organizations who do not necessarily have a rights approach. Democratic space for

debate on issues of substance is not available. This lack of debate within UNHCR, its dependence on an archaic convention that does not address the concerns in Asia or Africa, and shifting priorities in tune with the political mood of the major donors, have been responsible for UNHCR's lack of sensitivity to its protection mandate. UNHCR has gradually turned itself into an emergency relief service agency engaged in distribution of blankets and medicines. Protection is no longer on the agenda of the UNHCR in any meaningful manner.

12. It is clear that in the case of the Afghan refugees in New Delhi, UNHCR has failed in its primary tasks, namely the protection of "refugee rights" and the search for "durable solutions". Instead, it has used euphemisms such as "recategorization" and "reorientation" to mask a systematic policy of terminating assistance to refugees and leaving them to fend for themselves in a country where they are unable to pursue any gainful employment. Furthermore, it has done little to shield the refugees from abuses by the Government of India and by society at large in an atmosphere of intense anti-Afghan sentiment.

13. The persistence of these problems and the fact that they have been repeatedly brought to the attention of UNHCR clearly demonstrate the agency's intransigence. Not only has UNHCR failed the Afghan refugees in New Delhi, it has shown little interest in ameliorating the situation over the past five years. SAHRDC firmly believes that it is therefore necessary to create permanent and effective accountability mechanisms to safeguard the dignity and rights of refugees against violations by both the Government of India and UNHCR. It is a sad fact that the very agency originally established to protect and aid refugees can no longer be fully trusted to carry out its task.

14. Many United Nations conventions, including article 3 of the Convention against Torture, provide protection to refugees. Given the widespread abuse of refugee rights and UNHCR's unwillingness to raise issues because of its dependence on invitations from the host country, and the lack of debate within UNHCR, the protection of refugees cannot be solely mandated to UNHCR. The protection of refugee rights must come within the mandate of the United Nations human rights bodies and the Office of the High Commissioner for Human Rights; the Commission on Human Rights must create a separate agenda item, "Protection of refugees" at its fifty-seventh session to enable substantive discussion on this subject.